

**ROC Government Response to the Diaoyutai Islands Q&A on the
Website of Japan's Ministry of Foreign Affairs**

Published on June 5, 2013

November 10, 2014

Note: All Q&A below are taken directly from the website of Japan's
Ministry of Foreign Affairs.

Japan's Position

**Q1. What is the basic view of the Government of Japan on the
Senkaku Islands?**

A1. There is no doubt that the Senkaku Islands are clearly an inherent territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.

ROC Rebuttal to Q1-A1

1. Whether looked at from the perspective of history, geography, geology, practical use, or international law, the Diaoyutai Islands are an inherent part of ROC territory appertaining to Taiwan, as evidenced by numerous historical documents.

2. Although Japan claims to the outside world that it possesses

sovereignty over the Diaoyutai Islands, official documents from the Meiji period, such as diplomatic letters, recognized that sovereignty over the islands belonged to China. For example, in 1885 Japanese Home Minister Yamagata Aritomo secretly ordered Okinawa Governor Nishimura Sutezo to survey the Diaoyutai Islands, so as to establish a national marker on them. Nishimura sent back a confidential report on September 22 of that year, stating that the islands had long been named, used and recorded in official documents by China. As such, erecting a national marker there would be inappropriate at that time. He hence suggested that the plan be postponed.

Yamagata subsequently consulted with Minister of Foreign Affairs Inoue Kaoru on the matter. On October 21, Inoue replied to Yamagata through a highly confidential document (No. 38), stating, “The Qing state has already named each of the islands. Chinese newspapers have recently reported rumors that Japan is planning to seize Qing islands near Taiwan, thereby arousing suspicions of our country and repeatedly urging their government to pay close attention to the matter.” Inoue further advised, “The plan to establish a national marker on the islands is better left to a later date,” leading to a temporary suspension of the plan. These official Japanese documents prove that Japan already knew that the Diaoyutai Islands belonged to Qing territory, and were not *terra nullius* (ownerless land). Japan thus decided to temporarily set aside its plan, as it did not dare make a move at that time due to insufficient power. However, it also noted that the issue should be dealt with at a later date when the time was right.

3. Clearly aware that the Diaoyutai Islands belonged to the Qing, in January 1895 during the First Sino-Japanese War Japan nonetheless tried to annex them through a secret cabinet decision, which was based on claims of terra nullius and discovery-occupation. This plan was neither made public nor included in Japanese imperial decree No. 13 of 1896, which delineated the boundaries of Okinawa prefecture. As a result, the outside world (Qing China and the rest of the international community) remained in the dark regarding this development. As this cabinet decision only served as an expression of Japanese internal opinion, it was invalid in the international community and, subsequently, not legally binding on the ROC.

4. The aforementioned historical facts are clearly recorded in numerous Chinese and Japanese documents. In addition, Japanese scholars Inoue Kiyoshi and Murata Tadayoshi have confirmed in their work that Japan was fully aware that the Diaoyutai Islands were part of Qing China's territory, and were not terra nullius. By trying to annex the islands on the basis of discovery-occupation, Japan violated international law. Its claim was thus invalid *ab initio* (since the beginning).

Japan's Position

Q2. What are the grounds for Japan's territorial sovereignty over the Senkaku Islands?

A2. The Senkaku Islands were not included in the territory which Japan renounced under Article 2 of the San Francisco Peace Treaty of 1951 that legally defined the territory of Japan after World War II. Under Article 3 of the treaty, the islands were placed under the administration of the United States as part of the Nansei Shoto Islands. The Senkaku Islands are included in the areas whose administrative rights were reverted to Japan in accordance with the Agreement between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands that entered into force in 1972.

The Senkaku Islands have historically and consistently been part of the Nansei Shoto Islands which have been part of the territory of Japan. From 1885, surveys of the Senkaku Islands had been thoroughly conducted by the Government of Japan through the agencies of Okinawa Prefecture and through other means. Through these surveys, it was confirmed that the Senkaku Islands had been not only uninhabited but also showed no trace of having been under the control of the Qing Dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect markers on the islands to formally incorporate the Senkaku Islands into the territory of Japan. These measures were carried out in accordance with the internationally accepted means of duly

acquiring territorial sovereignty under international law (occupation of terra nullius). The Senkaku Islands are not part of Formosa (Taiwan) and the Pescadores Islands that were ceded to Japan from the Qing Dynasty in accordance with Article II of the Treaty of Shimonoseki, concluded in April 1895.

ROC Rebuttal to Q2-A2

1. The Diaoyutai Islands have been considered appertaining islands of Taiwan since the beginning of the 16th century, at the time of the Ming dynasty. In 1683, Taiwan was officially incorporated into Chinese territory by the Qing dynasty, with the Diaoyutai Islands being placed under the jurisdiction of Taiwan's Kavalan Office—currently known as Yilan County—in 1812. As mentioned in the Japanese position on Q1, a highly confidential document (No. 38) sent by Japanese Minister of Foreign Affairs Inoue Kaoru to Home Minister Yamagata Aritomo referred to Chinese public opinion. Specifically, it referred to a report titled “Alert from Taiwan” published by the *Shen Bao* (or *Shanghai News* in English), on September 6, 1885. This report stated that “an item published by the *Wenhuibao* contains information from Korea about Japanese raising their flag on islands located to the northeast of Taiwan, indicating their intention to occupy these islands.” Article 2 of the Treaty of Shimonoseki, which was signed on April 17, 1895, by the Qing dynasty and Japan, stipulated that China cede to Japan “the island of Formosa [Taiwan], together with all the islands appertaining or belonging to the said island of Formosa.” Naturally, the Diaoyutai Islands were

included in this arrangement.

2. Japan's secret annexation of the Diaoyutai Islands through the aforementioned cabinet decision of January 1895 was invalid ab initio, violating international law and lacking binding force on the ROC. Thus, the only legal basis for Japan's past sovereignty over the Diaoyutai Islands is the Treaty of Shimonoseki. However, following Japan's defeat in World War II, the Diaoyutai Islands and other appertaining islands of Taiwan, as well as the Pescadores Islands, were returned to the ROC in accordance with international legal documents, such as the 1943 Cairo Declaration, the 1945 Potsdam Proclamation, the 1945 Japanese Instrument of Surrender, and the 1952 Treaty of Peace between the ROC and Japan.

3. Japan's secret annexation of the Diaoyutai Islands in January 1895, which was based on its claim that the islands were terra nullius, was an illegal act invalid ab initio, for the following reasons:

(1) The Diaoyutai Islands were incorporated into the Chinese coastal defense zone during the Ming dynasty and Chinese territory during the Qing dynasty, as evidenced by numerous historical sources. Therefore, the islands were absolutely not terra nullius, as claimed by Japan.

(2) Clearly aware that the Diaoyutai Islands belonged to China, Japan nonetheless tried to annex the territory through a secret cabinet decision made in January 1895 during the First Sino-Japanese War. This act was

not in line with international law, which stipulates that discovery-occupation can only be claimed if the related land constitutes terra nullius. Moreover, the cabinet decision was neither made public nor included in Japanese imperial decree No. 13 of 1896. As a result, the outside world remained in the dark regarding this development. The decision was solely an expression of internal views within the Japanese government, and was not in line with international law concerning discovery-occupation. It therefore had no validity for the outside world, and is not legally binding on the ROC.

(3) The historical arguments mentioned above are not only found in Chinese documents. In fact, they have also been raised by the Japanese scholars Inoue Kiyoshi and Murata Tadayoshi, who have confirmed in their work that Japan was fully aware that the Diaoyutai Islands were part of Qing China's territory at the time of their annexation, and that this annexation cannot be explained on the grounds of discovery-occupation.

(4) According to international law, confirmation of the land's status as terra nullius is a prerequisite for discovery-occupation. Principles of international law recognized by nations worldwide stipulate that confirmation of terra nullius status and a formal declaration of occupation should be made for discovery-occupation to be valid. International law also mandates that a state may not acquire the legal rights or entitlement to a territory through illegal action or inaction. All this clearly demonstrates that Japan's illegal actions cannot be used as a foundation for any legal rights.

(5) In fact, at the time, Japan was not unaware of international legal principles concerning the confirmation of terra nullius and formal declaration of occupation. For example, when the Meiji government incorporated Iwo Jima in 1891, it was announced through an official degree (No. 190) on September 9 of that year, following a cabinet decision that was made on August 19. In addition, when the Meiji government incorporated Minami Torishima in 1898, it was also announced through an official degree (No. 58) on July 27 that year, following a cabinet decision made on July 1. These cases show that Japan's secret discovery-occupation of the Diaoyutai Islands was neither in line with international law nor consistent with its domestic practices.

4. Japan's claim that it had conducted numerous comprehensive surveys of the "Senkaku Islands" since 1885 is unfounded.

(1) Official Meiji documents make clear that Japan conducted only one on-site survey of the Diaoyutai Islands, which took place in October 1885. [See Paragraph 2 of the rebuttal to Japan's position on Q1.] This survey recognized that the islands were part of Chinese territory. Japan's Minister of Foreign Affairs Inoue Kaoru was aware that the Diaoyutai Islands were located "close to the Chinese border... next to Taiwan and belonging to the Qing empire." He also noted that "At this time, if we were to publicly place national markers, this must necessarily invite China's suspicion..." In November 1885, Okinawa Governor Nishimura Sutezo also confirmed in an official document that "Since this matter is

not unrelated to China, should problems arise, I would not know how to react. We therefore earnestly ask for instructions.”

(2) Seven years later, on January 27, 1892, Okinawa Governor Maruoka Kanji wrote a letter to Navy Minister Kabayama Sukenori, requesting that the Navy Ministry dispatch the *Kaimon* to survey the Diaoyutai Islands, given that these islands were “not sufficiently investigated.” However, the Navy Ministry declined the request due to “perilous seasonal weather conditions.”

(3) In May 1894, Okinawa Governor Narahara Shigeru wrote to the Home Ministry confirming that no on-site surveys of the Diaoyutai Islands had taken place since the first one in 1885. In August 1894, the First Sino-Japanese War broke out and Japan defeated China’s Beiyang Naval Fleet. On October 24, Japan crossed the Yalu River and invaded China, and by November 21, Japan had captured the Chinese city of Lüshun (Port Arthur). In December 1894, the Japanese Home Ministry believed that the time was right for its plan to annex the Diaoyutai Islands, stating that the incorporation of the islands “involved negotiations with the Qing state... but the situation today is greatly different from the past.”

(4) Therefore, Japan’s claim that Okinawa authorities had conducted numerous on-site surveys of the Diaoyutai Islands since 1885 and that the islands were terra nullius is completely false. The Japanese scholars Inoue Kiyoshi and Murata Tadayoshi have raised the same points in their research.

5. The Japanese government claims that “The Senkaku Islands have historically and consistently been part of the Nansei Shoto Islands which have been part of the territory of Japan.” However, this is not in line with historical facts. For example, originally the Ryukyu Kingdom (1429-1879) was not part of Japan’s territory. It was invaded by troops from Japan’s Satsuma Domain in 1609, and was forced to cede the northern Amami-Oshima island to the Satsuma Domain. However, Japan was still not able to expand its territory to the main island of the Ryukyu Islands, as well as islands south to it. Japan unilaterally annexed the kingdom by force in 1879, which constituted an illegal invasion aimed at territorial expansion, similar to the secret annexation of the Diaoyutai Islands in 1895.

Japan's Position

Q3. What are the concrete examples of Japan's valid control over the Senkaku Islands?

A3. A resident of Okinawa Prefecture who had been engaging in activities such as fishery around the Senkaku Islands since around 1884 made an application for the lease of the islands, and approval was granted by the Meiji Government in 1896. After this approval, he sent workers to those islands and ran the following businesses: collecting bird feathers, manufacturing dried bonito, collecting coral, raising cattle, manufacturing canned goods and collecting mineral phosphate guano (bird manure for fuel use). The fact that the Meiji Government gave approval concerning the use of the Senkaku Islands to an individual, who in turn was able to openly run these businesses mentioned above based on the approval, demonstrates Japan's valid control over the Islands.

Before World War II, the Central Government and the Government of Okinawa Prefecture conducted activities such as field surveys on the Senkaku Islands.

After World War II, as the Senkaku Islands had been placed under the administration of the United States as part of Nansei Shoto in accordance with Article 3 of the San Francisco Peace Treaty, Japan could not exercise direct control over the Islands until the administrative rights were reverted to Japan on May 15, 1972. However, even during this period, the

Islands remained as part of the territory of Japan, and this legal status of the Islands, which was that no foreign state had rights over them, with the only exception of the administrative rights which the United States was authorized to exercise over the Islands under the San Francisco Peace Treaty, was ensured through the valid control by the United States Civil Administration of the Ryukyu Islands and the Government of the Ryukyu Islands.

The following are some examples of valid control after the reversion to Japan of the administrative rights over Okinawa including the Senkaku Islands.

(1) Patrol and law enforcement. (e.g. law enforcement on illegal fishing by foreign fishing boats)

(2) Levying taxes on the owners of the Islands under private ownership. (in Kuba Island.)

(3) Management as state-owned land (in Taisho Island, Uotsuri Island, etc.)

(4) As for Kuba Island and Taisho Island, the Government of Japan has offered them to the United States since 1972 as facilities/districts in Japan under the Japan-U.S. Status of Forces Agreement.

(5) Researches by the Central Government and the Government of

Okinawa Prefecture (e.g. Utilization and development research by Okinawa Development Agency (construction of temporary heliport, etc.) (1979), Fishery research by the Okinawa Prefecture (1981), Research on albatrosses commissioned by the Environment Agency (1994).).

ROC Rebuttal to Q3-A3

1. As stated in the rebuttal to Japan's position on Q2, Japan secretly and illegally annexed the Diaoyutai Islands in January 1895 when it defeated the Qing in the First Sino-Japanese War. Japan did not reveal this action to the outside world at that time, and therefore neither the Qing court nor the international community was aware of it. As a result, China had no basis to issue a protest.

2. The Qing court signed the Treaty of Shimonoseki with Japan on April 17, 1895, ceding Taiwan and all its appertaining islands, including the Diaoyutai Islands, to Japan. As a result, during the next 50 years—until Japan's defeat in World War II—the Diaoyutai Islands, as appertaining islands of Taiwan, were part of Japanese territory together with Taiwan. Therefore, it was only natural that Japan controlled and used the islands in this period. Other countries did not issue any protests over this.

3. From 1945 to 1972, when the US military occupied and administered the Diaoyutai Islands based on the 1951 San Francisco Peace Treaty, the islands were ruled by neither Japan nor any other country. As such, the administration by the US military did not have any significance in terms

of sovereignty. At the time, the ROC considered it unnecessary to negotiate with the US over the islands as the US was assisting in safeguarding security in the Taiwan Strait based on the Mutual Defense Treaty between the ROC and the US, which was signed in 1954. Ever since the Diaoyutai Islands became a source of controversy in 1968, the ROC government has repeatedly asserted its sovereignty over the islands and lodged numerous protests with Japan. Therefore, the effective control over the islands by Japan was not extended, as claimed by the Japanese government.

4. Following the end of World War II, the US government returned administrative rights over the Ryukyu Islands to Japan, but failed to obtain consent from the Allied countries for this action. In accordance with Article 3 of the San Francisco Peace Treaty, the Nansei Islands south of 29°N latitude, including the Ryukyu Islands, were placed under US jurisdiction, and administered by US authorities. However, based on the San Francisco Peace Treaty, the Cairo Declaration, and the Potsdam Proclamation, the US had no right to unilaterally make decisions regarding sovereignty over the Ryukyu Islands and the Diaoyutai Islands. In August 1953, the US decided to return Amami Oshima—located in the northern part of the Ryukyu Islands—to Japan. Consequently, the ROC Ministry of Foreign Affairs delivered a memorandum to the US Ambassador to the ROC on November 24 of that year, stating for the first time that the ROC had the right and obligation to express its opinion on the final decision concerning the future of the Ryukyu Islands.

5. With regard to the negotiations between the US and Japan on the Okinawa Reversion Treaty, the ROC government, in order to safeguard its sovereignty over the Diaoyutai Islands, issued numerous statements concerning the erroneous actions of the US and Japan, and expressed its firm position. Examples include the following:

(1) On April 9, 1971, the US Department of State stated that administrative rights over the Diaoyutai Islands would be reverted to Japan along with the Ryukyu Islands in 1972. The ROC Ministry of Foreign Affairs issued a solemn statement on June 11, 1971, declaring that the Diaoyutai Islands were still appertaining to Taiwan province, and that, whether looked at from the perspective of geographical position, geological structure, historical connection, or the long and uninterrupted use by residents of Taiwan province, the islands were undoubtedly part of ROC territory. Therefore, the ROC government did not accept the return of administrative rights over the Diaoyutai Islands, together with the Ryukyu Islands, to Japan. It also expressed its hope that countries concerned would respect ROC sovereignty over the Diaoyutai Islands and take reasonable and legal measures, so as to prevent serious consequences in the Asia-Pacific region.

(2) On June 17, 1971, the US and Japan signed the Okinawa Reversion Treaty. ROC citizens in Taiwan, as well as overseas compatriots, initiated a “Safeguard the Diaoyutais” campaign, strongly protesting this development. On December 2 of that year, the ROC government officially placed the Diaoyutai Islands under the jurisdiction of Daxi

Village, Toucheng Township, Yilan County, Taiwan province.

(3) On May 9, 1972, the ROC Ministry of Foreign Affairs issued a statement regarding the US government's plan to hand over the Ryukyu Islands and the Diaoyutai Islands to Japan on May 15 of the same year, stating that the ROC government firmly opposed the "return" of administrative rights over the Diaoyutai Islands and Ryukyu Islands to Japan. The statement emphasized that the ROC government, based on its inalienable duty to defend its territorial integrity, would not give up its territorial sovereignty over the Diaoyutai Islands.

6. Meanwhile, as early as March 15, 1971, Chou Shu-kai, ROC ambassador to the US at the time, sent a note verbale in protest to the US government to explain that the Diaoyutai Islands are an inherent part of ROC territory. On May 26 of that year, the US government sent an official reply, indicating that the transference of administrative rights over the islands to Japan would not affect the ROC's sovereignty claim over them. The US Senate later clarified that the US was only transferring administrative rights of the islands to Japan and that the US would remain neutral on the sovereignty issue, expressing its belief that the sovereignty issue should be resolved through negotiations between the ROC and Japan. According to these diplomatic documents, which the US has never rescinded, the transference of administrative rights did not amount to confirmation of Japan's sovereignty over the islands, and the US holds a neutral stance on this issue and maintains that the issue should be resolved through negotiations between the ROC and Japan.

7. The Diaoyutai Islands were first discovered, named and used by Chinese, who used the islands for navigation purposes, fishing, repairing fishing gear, collecting bird eggs and medicinal herbs, and taking shelter from strong winds. After World War II, ROC nationals dismantled boats, salvaged sunken ships, built cart tracks, and created makeshift wharfs on the islands. The islands thus played an important role in the maritime activities of people from Taiwan. The long-term use of the islands by our people serves as additional evidence that the ROC effectively controlled the islands.

8. The US Guano Islands Act of 1856 can also be used as reference. The first section of this act states the following:

“Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.”

Long before Japan secretly annexed the Diaoyutai Islands in January 1895, Chinese people used the islands for such purposes as fishing, repairing fishing equipment, collecting bird eggs and medicinal herbs, and taking shelter. Moreover, the islands had been incorporated into China’s coastal defense system during the Ming dynasty and China’s territory during the Qing dynasty.

Japan's Position

Q4. What is the view of the Government of Japan on China's (and Taiwan's) assertions on territorial sovereignty over the Senkaku Islands?

A4. None of the points raised by the Government of China and the Taiwanese authorities as historical, geographical or geological evidences provide valid grounds in light of international law to support their sovereignty over the Islands.

Moreover, it is only since the 1970s that the Government of China and the Taiwanese Authorities began making their own assertions about the Senkaku Islands, which was after a survey conducted by an agency of the United Nations in autumn of 1968 had indicated the possibility of the existence of petroleum resources on the East China Sea, and attention was focused on the Senkaku Islands. Until then, they had never expressed any objections, including to the fact that the Islands were included in the area over which the United States exercised administrative rights in accordance with Article 3 of the San Francisco Peace Treaty. China has never explained why it had not expressed objections.

There is a description of "the Senkaku Islands, Yaeyama District, Okinawa Prefecture, Empire of Japan" in the letter of appreciation dated May 1920 sent from the then consul of the Republic of China in Nagasaki concerning the distress which involved Chinese fishermen from Fujian

Province around the Senkaku Islands. In addition, an article in the People's Daily dated January 8, 1953, under the title of "Battle of people in the Ryukyu Islands against the U.S. occupation," made clear that the Ryukyu Islands consist of 7 groups of islands including the Senkaku Islands. Moreover, in a world atlas collection published in 1958 by a Chinese map-publishing company (reprinted in 1960), there is a clear description of the Senkaku Islands as the "Senkaku Group of Islands" and it treats them as part of Okinawa. Furthermore, from the 1950s onward, the U.S. military used some of the Senkaku Islands (Taisho Island and Kuba Island) as firing/bombing ranges while the islands were under the administration of the United States, but there is no record of China ever having protested it during that period.

ROC Rebuttal to Q4-A4

1. As stated in the rebuttals to Japan's positions on Q1 and Q2, the Diaoyutai Islands are an inherent part of ROC territory appertaining to Taiwan, as evidenced by numerous historical documents. They were absolutely not terra nullius, as claimed by the Japanese.

2. After secretly annexing the Diaoyutai Islands in 1895, Japan changed the name of the islands to "Senkaku Islands," and incorporated them into Okinawa prefecture. The outside world was unaware of these developments. As such, for the Qing court, there was no basis on which to issue a protest. Japan's secret annexation of another nation's territory in violation of international law naturally was invalid ab initio. However, as

the international community did not know about Japan's actions at that time, Japan, by using the name "Senkaku Islands," was able to conceal the true identity of the islands as an integral part of ROC territory, even for a period following Japan's surrender at the end of World War II. As a result, a number of international legal documents stipulating how to deal with Japan following World War II, including the Cairo Declaration, were not fully implemented.

3. As the international community was not aware that the "Senkaku Islands" were in fact the Diaoyutai Islands, Article 3 of the San Francisco Peace Treaty mistakenly placed them under US trusteeship. However, in responding to a note verbale from the ROC in 1971, the US government made it very clear that the transference of administrative rights over the Diaoyutai Islands to Japan did not constitute a transference of sovereignty. This indicates that the sovereignty issue concerning the islands should be resolved by the ROC and Japan.

4. In addition, as neither the ROC nor mainland China was invited to take part in the San Francisco Peace Conference of 1951 and sign the San Francisco Peace Treaty, the two were unable to raise objections at the conference. However, Article 4 of the Treaty of Peace between the ROC and Japan, which was signed in April 1952 in Taipei, states that "all treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war." Given that the Treaty of Shimonoseki had been annulled, the Diaoyutai Islands should have been returned to the ROC along with the

island of Taiwan and all other appertaining islands.

5. As for the map issue, the Japanese side has previously questioned why the ROC marked the Diaoyutai Islands as Japanese territory in the 1933 *Republic of China New Atlas*. As a matter of fact, following its defeat in the First Sino-Japanese War, the Qing court signed the Treaty of Shimonoseki, ceding to Japan “the island of Formosa [Taiwan], together with all the islands appertaining or belonging to the said island of Formosa.” During the 50 years from the time the treaty took effect until the end of World War II, these islands, including the Diaoyutai Islands, were Japanese territory. The *Republic of China New Atlas* was therefore a reflection of the world at that time.

6. As a result of the Treaty of Shimonoseki, Taiwan, together with all the islands appertaining or belonging to it, as well as the Penghu Islands, was part of Japan’s territory for 50 years between 1895 and 1945. As such, when Japan quotes a letter of appreciation issued in 1920 by ROC Consul in Nagasaki Feng Mian, which recognized that the Diaoyutai Islands were part of Japanese territory, it should be noted that this letter was not factually incorrect. If Japan believes that ROC diplomats recognized that the islands were Japanese territory based on this letter, it seems to have forgotten the 50-year period when it ruled Taiwan and its appertaining islands, including the Diaoyutai Islands.

7. Furthermore, it is not fair when Japan states that the ROC only asserted its sovereignty rights over the Diaoyutai Islands after the United

Nations Economic Commission for Asia and the Far East (ECAFE; currently known as the UN Economic and Social Commission for Asia and the Pacific) released a report in 1968 indicating that the seas surrounding the Diaoyutai Islands possibly held large oil reserves, for the following reasons:

(1) When the ROC was founded in 1912, Taiwan, including the Diaoyutai Islands, had already been renamed “Senkaku Islands” by Japan and had been part of Okinawa prefecture for more than 10 years. Following victory in World War II, the ROC government accepted the surrender of Rikichi Ando, the last Japanese Governor-General of Taiwan, on October 25, 1945, in Taipei, and took over all documents from the Governor-General’s office. As the ROC government had never ruled Taiwan before this point in time, neither it nor the international community was in a position to know that the “Senkaku Islands,” which had been given that name by Japan in 1900, were in fact the Diaoyutai Islands that had been secretly annexed by Japan in 1895.

(2) In fact, Japan itself did not become active with regard to its sovereignty claim over the Diaoyutai Islands until the sovereignty dispute became an international issue in 1968. Japan only erected a national marker on the islands in May 1969.

(3) Japan’s secret annexation of the Diaoyutai Islands when the Qing state was defeated by Japan in the First Sino-Japanese War in 1895, which violated international law, was invalid ab initio. In addition, the Treaty of

Shimonoseki had been annulled after World War II based on a series of international legal documents including the Cairo Declaration and the Treaty of Peace between the ROC and Japan. Hence, Taiwan and all its appertaining islands, including the Diaoyutai Islands, should have been returned to the ROC. The ROC sovereignty claim over the Diaoyutai Islands and the UN report indicating possible oil reserves in the seas around the island group are therefore two separate issues that are unrelated. Moreover, none of this can explain Japan's illegal act of annexing the Diaoyutais. In other words, as Japan's secret occupation of our territory was invalid *ab initio* under international law, the Diaoyutai Islands should be immediately returned to the ROC, regardless of whether there are oil reserves in the surrounding seas.

Japan's Position

Q5. The Chinese government asserts that the Senkaku Islands had not been terra nullius (“land belonging to no state”) as Japan claims, but that they have been an inherent part of the territory of China from ancient times; that they had been discovered, named and used by the Chinese nationals before anyone else, according to historical documents; that Chinese fishermen had engaged in fishing and other productive activities in this area; and that people along China’s southeast coast had been using Uotsuri Island as a navigation beacon. It also asserts that during the Ming Dynasty, the islands were already discovered and recognized by imperial envoys of China and that these islets belonged to Taiwan, which was included in China’s maritime defense zone. What is the view of the Japanese government?

A5. Japan incorporated the Islands into Okinawa Prefecture after conducting thorough surveys from 1885, while ascertaining carefully that these islands had not only been uninhabited but also showed no trace of having been under a control of any state including China.

None of the arguments that the Chinese government or Taiwanese authorities have presented as historical, geographic or geological grounds is valid evidence under international law to support the Chinese assertion of its territorial sovereignty over the Senkaku Islands. Under international law, for example, the discovery of an island or geographical proximity

alone does not evidence the assertion of territorial sovereignty.

Recently, China has been asserting that it has historically owned the Senkaku Islands (meaning that it has not been terra nullius) based on many historical documents and maps existing in China. However, the contents of these documents, are completely insufficient as evidence to support China's assertion when those original documents are examined. Specifically,

(i) China asserts as follows: The Records of the Imperial Title-Conferring Envoys to Ryukyu (Shi Liu Qiu Lu) (1534) written by Chen Kan, an imperial title-conferring envoy from the Ming Court, clearly states that “the ship has passed Diaoyu Dao, Huangmao Yu, Chi Yu...Then Gumi Mountain comes into sight, that is where the land of Ryukyu begins” and, since “Gumi Mountain” is the present Kume Island, it means that the Senkaku Islands, located west of Kume Island, were the territory of China. China also asserts that in his book Records of Messages from Chong-shan (Zhong Shan Chuan Xin Lu) (1719), Xu Baoguang states that “姑米島琉球西南方界上鎮山” (Note: Mt. Gumi is the mountain guarding the southwest border of Ryukyu) and that this is also the ground for its assertion that the area west of Kume Island had belonged to China. However, although these documents showed that Kume Island belonged to Ryukyu, they did not have any reference that the Senkaku Islands, located to the west of Kume Island, belonged to the Ming or Qing Dynasty of China.

(ii) China also asserts that An Illustrated Compendium on Maritime Security (Chou Hai Tu Bian) (1561) compiled by Hu Zongxian included the Senkaku Islands on the “Map of Coastal Mountains and Sands” (Yan Hai Shan Sha Tu) and that these groups of islands were incorporated into the jurisdiction of the coastal defense of the Ming Court. The book, however, is not clear regarding whether these groups of islands were within the coastal defense of the Ming Court. The mere fact that the Senkaku Islands were printed on that map does not mean that they were generally regarded as territory of China at that time.

Rather, investigations in Japan have confirmed the presence of examples showing that since the 20th century, even through the 1950s and 1960s, China has recognized the Senkaku Islands as Japanese territory. Examples:

(i) From the 1950s onward, the U.S. military used part of the Senkaku Islands (Taisho Island and Kuba Island) for firing/bombing ranges while the islands were under the administration of the United States, but there is no record of China ever having protested it during that period.

(ii) There is a description of "the Senkaku Islands, Yaeyama District, Okinawa Prefecture, Empire of Japan" in a letter of appreciation dated May 1920 and sent from the then consul of the Republic of China in Nagasaki concerning the distress around the Senkaku Islands that

involved Chinese fishermen from Fujian Province.

(iii) An article in the People's Daily dated January 8, 1953, under the title of "Battle of People in Ryukyu Islands against U.S. Occupation," wrote that the Ryukyu Islands consisted of seven groups of islands including the Senkaku Islands.

(iv) Moreover, the "World Atlas Collection" published by a Chinese map-publishing company in 1958 (reprinted in 1960) clearly identified the Senkaku Islands as "the Senkaku Group of Islands" and treated them as part of Okinawa.

ROC Rebuttal to Q5-A5

1. Japan has intentionally ignored the plethora of important historical documents proving that the Diaoyutai Islands belong to the Republic of China. It is common knowledge that those historical documents from China sufficiently show that the Diaoyutai Islands were long ago incorporated into the Ming dynasty's coastal defense zone as well as the Qing dynasty's territory. The following are examples of such documents from the Qing dynasty:

(1) In 1722, Imperial Censor Huang Shujing wrote *Taihai shi cha lu* (Record of missions to Taiwan and adjacent waters) about his inspection tour of Taiwan. In volume 2, "Wubei" (Military defense), Huang listed the patrol routes of the naval forces of Taiwan Prefecture, stating, "In the

seas north of Taiwan is an island called Diaoyutai where a dozen large ships may be anchored.”

(2) Subsequently, Fan Cheng’s *Chongxiu Taiwanfu zhi* (Revised gazetteer of Taiwan Prefecture) (1747) and Yu Wenyi’s *Xuxiu Taiwanfu zhi* (Continued gazetteer of Taiwan Prefecture) (1764) also recorded Huang’s depiction.

(3) Both Chen Shujun’s *Gamalanting zhi* (Kavalan subprefecture gazetteer) (1852) and Zhou Maoqi’s *Quantai tushuo* (An illustrated description of Taiwan) (1872) recorded that “In the seas around Taiwan lies the island of Diaoyutai, where a dozen huge ships may anchor.”

(4) Chen Shouqi’s *Chongzuan Fujian tongzhi* (Recompiled general gazetteer of Fujian) (1871) further listed the Diaoyutai Island under the Kavalan Subprefecture of Taiwan (now Yilan County) in volume 86, “Haifang, Gexian chongyao” (Coastal defense and strategically important places in all districts). These Qing dynasty local gazetteers, which are essentially historical records, local government records, and instructional guides, not only record the Chinese navy patrols of the Diaoyutai Islands, but also prove China’s continuous sovereignty over them. As such, the gazetteers are sufficient evidence that the Diaoyutai Islands appertain to Taiwan and were an inherent part of Qing dynasty territory.

(5) *Huangchao zhongwai yitong yutu* (Map of imperial China and foreign lands) published by the Qing state in 1863 also included the Diaoyutai

Islands as Chinese territory, with ensuing foreign maps following suit.

2. In addition, the Ming and Qing editions of the *Shi liuqiu lu* (Records of imperial missions to Ryukyu) were written by official envoys traveling to the Ryukyu Kingdom so as to officiate over investiture ceremonies. These documents noted that the Heishuigou (known today as the Okinawa Trough) “marks the boundary between China and foreign territories,” acting as the marine body that demarcates Chinese territory. Examples of such records are as follows:

(1) In his 1756 monograph *Liuqiu guo zhi lue* (A brief introduction to Ryukyu Kingdom), Envoy Zhou Huang of the Qing court wrote that “Ryukyu is surrounded by the sea. Off of its west coast lies Heishuigou, which borders Fujian Province.” It also cites a record by Wang Ji, a former envoy, stating, “What does the Heishuigou indicate? It is the boundary between China and foreign territories.”

(2) In his work *Liuqiu ruxue jianwen lu* (An observation of educational activities in Ryukyu) published during the Qianlong regime (1735-1796), Pang Xian, an instructor at the Qing court’s highest educational institution, the Guozijian, also notes that “the Heishuigou is the national maritime border.”

(3) *Map of Imperial China and Foreign Lands* published by China in 1863 marked the Diaoyutai Islands as Chinese territory. Therefore, before the Japanese government officially annexed the Ryukyu fiefdom as part

of Okinawa prefecture in 1879, Kochi Uekata Chojo Sho Tokuko wrote an official letter in reply to Japanese Foreign Secretary Terashima Munenori, confirming that the Ryukyu Islands consisted of 36 islets and that the “long stretch of” islands between Kume Island and Fuzhou belonged to China. Hence, the proposal made in 1880 to the Qing court by Shishido Tamaki, Japan’s minister to China, to divide the Ryukyu Islands between the two countries further proves that no terra nullius existed between China and the Ryukyu Islands.

3. As to Japan’s comments about the map issue in Q4, the ROC Consul at Nagasaki Feng Mian presenting a certificate of appreciation to Japan, and the Ryukyu Islands being placed under US trusteeship in the 1950s, rebuttals to those topics were already presented under the rebuttal of Q4 and will not be repeated here.

Japan's Position

Q6. The Chinese government asserts that maps compiled in China or in foreign countries, including Japan, before the 1800s show that the Senkaku Islands belonged to China. What is the view of the Japanese government?

A6. Intended purposes of maps and compilers of maps vary and the existence of a map in itself does not evidence the assertion of territorial sovereignty. From 1885, the Government of Japan thoroughly conducted surveys of the Senkaku Islands through the agencies of Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the Senkaku Islands had been not only uninhabited but showed no trace of having been under the control of the Qing Dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect markers on the islands to formally incorporate the Senkaku Islands into the territory of Japan. Meanwhile, no valid ground under international law has been shown to support that China had established sovereignty over the Senkaku Islands before Japan incorporated them into its territory in 1895. It is only since the 1970s that the Chinese government began to make its own assertions over the Senkaku Islands.

The map in the Illustrated Outline of the Three Countries (1785) by Hayashi Shihei, which China cites as one of examples supporting its assertion, is not clear as to whether it was intended to draw the

recognition of territories of that time. To begin with, it does not evidence accurate knowledge as shown by the fact, for instance, the size of Taiwan in the map is only about one-third of that of Okinawa's main island.

ROC Rebuttal to Q6-A6

1. The Diaoyutai Islands were indicated as Chinese territory in maps published by China, Japan, and the West in the eighteenth and nineteenth centuries, with many historical documents verifying this practice. This fact cannot be denied.

(1) In 1556, Zheng Shungong, a Ming envoy to Japan, recorded in *Riben yijian* (A glimpse into Japan) the following passage, “Diaoyutai Island is an islet belonging to Xiaodong [Taiwan],” adding an illustrated map of the islands. Thus, as early as the sixteenth century the Diaoyutai Islands were already regarded as appertaining to Taiwan.

(2) Many other significant Chinese historical maps list the Diaoyutai Islands as Chinese territory, including: *Liuqiu guo hai tu* (A roadmap to Ryukyu) attached to the 1579 *Shi Liuqiu lu* (Record of the imperial mission to Ryukyu) by Xiao Chongye, a Ming China envoy who officiated an investiture ceremony in Ryukyu; the 1629 *Huang Ming xiang xu lu* (Record of the interpreters of the august Ming) by Mao Ruizheng; the 1767 *Kun yu quan tu* (Universal geographic map); and the 1863 *Huangchao Zhongwai yitong yutu* (Map of imperial China and foreign lands).

(3) Many Japanese maps from that time period also list the Diaoyutai Islands as Qing China territory: The 1785 *Sangoku tsuran zusetu* (Illustrated outline of the three countries) by Japanese cartographer Hayashi Shihei marked the Diaoyutai Islands and China in red, the 36 Ryukyu Islands in light yellow, and Japan in light green, indicating that the Diaoyutai Islands were regarded as belonging to China and not the Ryukyu Islands. He stated, “I would not brazenly fabricate maps of these countries.” Hayashi also used the *Zhongshan zhuanxin lu* (A faithful record of the Ryukyu Islands) and attached, as a reference, drawings by Xu Baoguang, the deputy envoy sent to the Ryukyu Islands for another investiture ceremony in 1719. Xu’s renowned ancient historical records have received wide acclaim from historians in China, Japan, and the Ryukyu Islands. The illustration separated the Diaoyutai Islands from the 36 Ryukyu Islands by painting the Diaoyutai Islands and China the same color, indicating that the islets were Qing territory. Other examples include (i) “Genrokukoku ezu no Ryūkyū koku sajima guntōzu” (Ryukyu archipelago map of the national territory maps) prepared by the Japanese bakufu in 1702; (ii) “Ryūkyūgoku zen ezu” (Map of the Ryukyu kingdom) in the book *Nantōshi* (Southern islands annals) written by Arai Hakuseki in 1719; (iii) *Ryūkyū zenzu* (Complete map of the Ryukyus) in Shimajiri Museum with an unknown publication date; (iv) *Tōdo yo jizi* (Map of China) published in 1854 by Choen Nagayama, listing Taiwan, Pengjia Island, Huangwei Island, Chiwei Island and other appertaining islands as Chinese territory; and (v) “Ryūkyū shotō zenzu” (Map of Ryukyu Islands) within the *Ryūkyū sinsi* (New Ryukyu annals) by Fumihiko Otsuki.

(4) In addition, had the Diaoyutai Islands become Japanese territory in 1895 as claimed, why was their Japanese name (Senkaku Islands) not used within the scope of the Nansei Islands on official maps published immediately afterward? In reality, Japan did not call them the “Senkaku Islands” until 1900 (a name given by Okinawa prefecture teacher Hisashi Kuroiwa) and did not use the moniker for Japanese maps until the Imperial Land Survey Department published the *Tokara to Senkaku shotō* (Map of Tokara Islands and Senkaku Islands) in 1930—35 years after Japan gained control over Taiwan. In the wake of World War II, Japan had to relinquish Taiwan, including the Diaoyutai Islands, based on the 1951 San Francisco Peace Treaty. It therefore excluded the islands from the appendix for the Kyushu area and Nansei Islands in the publication *Nihon chiri* (Geography of Japan) certified by the Geospatial Information Authority of Japan with official document No. 878 issued on April 4, 1961. Such omissions were not unique. The “Senkaku Islands” did not appear either in the *Nihon chizushū* (Complete atlas of Japan) published by Teikoku-Shoin Co., Ltd. on November 20, 1963, or on the map of the Nansei Islands in the “Geography of Japan” section of volume two of the *Gakken Color Encyclopedia* compiled by Taiji Suzuki and published by the Japan Library Association on April 1, 1969. In fact, during the period between the end of World War II and 1968 when the islands’ sovereignty issue surfaced, Japan neither listed the Diaoyutai Islands as territory nor encroached upon them physically. Moreover, Japan never raised the issue with the United States until it sought administration rights over the islands in 1970.

(5) Maps created before 1895 in the West all named the Diaoyutai Islands using the Romanization of their Chinese names. For example, the *Map of East China Sea Littoral States* by Pierre Lapie, a French national, and others in 1809, used the same color to indicate Diaoyutai Island, Huangwei Island, Chiwei Island and Taiwan Island. Also, *A New Map of China* published in 1811 in Great Britain, the *Colton's China* map released in 1859 in the United States, and *A Map of China's East Coast: Hongkong to Gulf of Liao-Tung* published in 1877 by the British Navy all named the Diaoyutai Islands using the Romanization of their Chinese names. French missionary Antoine Gaubil, who went to China in 1722, wrote his memoir based on Xu Baoguang's *Zhongshan zhuanxin lu* and his conversations in Beijing with envoys from Ryukyu Kingdom. It was published in 1758 in *Lettres Édifiantes et Curieuses* and contained a map called *Chinois de la Forteresse de Kilongchan à Napakiang*. When describing the sea route from Keelung, Taiwan, to Naha Harbor, Ryukyu Islands, the map listed Diaoyutai Island, Huangwei Island, and Chiwei Island in French using Romanization based on their Chinese names.

2. Old official documents from Japan disprove claims that Japan repeatedly made surveys of the Diaoyutai Islands after 1885, as seen in the ROC rebuttals to Q2 and Q5. Therefore, Japan needs to publish other related records and photographs from such surveys of the Diaoyutai Islands as evidence. Japan also needs to explain the letter of May 1894 from Okinawa Governor Narahara Shigeru to the Japanese Home Minister, confirming that no field surveys had been conducted since the

initial one in 1885. Assuming that Governor Shigeru was correct at that time, Japan's current claims are unfounded.

Japan's Position

Q7. The Chinese government claims that Japan stole the Senkaku Islands during the Sino-Japanese War. The Chinese government also asserts that Taiwan, all the islands appertaining to it and the Pescadores were later ceded to Japan under an unequal treaty, "the Treaty of Shimonoseki," after the Sino-Japanese War, and were incorporated into the territory of Japan. What is the view of the Japanese government?

A7. Although the Treaty of Shimonoseki does not clearly define the geographical limits of the island of Formosa and the islands appertaining or belonging to Formosa ceded to Japan by the Qing Dynasty of China, nothing in the negotiation history (or otherwise) supports the interpretation that the Senkaku Islands are included in the island of Formosa and the islands appertaining or belonging to it in Article 2b of the Treaty.

Furthermore, Japan had already undertaken preparation, from 1885, even before the Sino-Japanese War, to formally incorporate the Senkaku Islands into the territory of Japan while carefully ascertaining that no state including the Qing Dynasty of China had control over the Islands. Following the Cabinet Decision in January 1895, which was made before the concluding of the Treaty of Shimonoseki, the Government of Japan incorporated the Senkaku Islands into Okinawa Prefecture and consistently treated the Islands as part of Okinawa Prefecture, not as an

area under the jurisdiction of the Governor-General of Taiwan which was ceded to Japan after the Sino-Japanese War.

These facts make it clear that, both before and after the Sino-Japanese War, the Government of Japan has never regarded or treated the Senkaku Islands as part of the island of Taiwan or islands appertaining or belonging to the island of Taiwan, which had been part of the Qing Dynasty of China. Thus, it is evident that the Senkaku Islands could never have been part of the cession made under the Treaty of Shimonoseki.

Moreover, it was recognized in the Sino-Japanese Peace Treaty of 1952 that Japan renounced all right, title and claim to Taiwan, the Pescadores and other islands under Article 2 of the San Francisco Peace Treaty. Against the above background, however, there was absolutely no discussion on territorial sovereignty over the Senkaku Islands in the process of negotiations for the Sino-Japanese Peace Treaty. What this means is that it was considered as the rightful premise that the Senkaku Islands were the territory of Japan from before that time.

ROC Rebuttal to Q7-A7

1. Since 1971, the Japan government has stated on many occasions that it conducted many surveys after 1885, confirming that the Diaoyutai Islands did not belong to the Qing state and were in fact terra nullius. As such, the 1895 Cabinet decision to annex the islands was based on the principle of discovery-occupation in international law. However, in the

rebuttal to Japan's claims in Q2, official documents from the Meiji era were shown to confirm that in 1885 Yamagata Aritomo, then Japan's home minister, did instruct Okinawa Governor Nishimura Sutezo to conduct a survey of the islands and place a national marker there. However, the governor responded in a report suggesting that it would be inappropriate to erect such a marker, as the islands were likely Qing China's territory. Besides this one survey, no other survey was conducted, disproving Japan's claim to have had conducted multiple surveys of the islands. In this context, when Japan secretly occupied the islands in January 1895, it clearly knew that the islands were not only not terra nullius but rather Qing China territory. As it had already won the First Sino-Japanese War, it therefore decided to annex the islands since there was no scruple anymore for it not to do so. However, they did not publicize news of this annexation. Hence, its occupation of another nation's territory, kept secret from the outside world, has been invalid ab initio (since the beginning) under international law. As a result, the Treaty of Shimonoseki of April 1895 provides the only possible legal basis for Japan's acquisition of sovereignty over the Diaoyutai Islands in 1895. If Japan believes that the Diaoyutai Islands were completely unrelated to the Treaty of Shimonoseki, then it must provide concrete and explicit evidence to support its claim. If it does not do so, one can only conclude that, in light of the fact that Japan's secret occupation of the islands in January 1895 was invalid ab initio, Japan is unable to produce any clear evidence whatsoever to support its claim.

2. Article 2 of the Treaty of Shimonoseki stipulated that China cedes to

Japan “the island of Formosa [Taiwan], together with all the islands appertaining or belonging to the said island of Formosa.” As the Diaoyutai Islands are an island group belonging to Taiwan, they were ceded to Japan together with Taiwan, Pengjia Islet and other subsidiary islands. The legal basis for Japan’s acquisition of the Diaoyutai Islands must be the Treaty of Shimonoseki.

3. Japan claims that it and the Qing court delineated new maritime borders in accordance with Article 2 of the Treaty of Shimonoseki and appended maps of Taiwan. According to Japan, these maps drawn by Yamayoshi Moriyoshi in March 1895, one showing all the islands of Taiwan and another displaying the Pescadores Islands and northern Taiwan, did not include the Diaoyutai Islands. However, the Japanese-language original of the Treaty of Shimonoseki on display at the Japan Center for Asian Historical Resource (JACAR) has no a map of Taiwan attached, and thus provides no support for Japan’s aforementioned claim. Moreover, a copy of the treaty for the Qing Emperor Guangxu and a copy approved by the Japanese emperor, both preserved by the National Palace Museum in Taipei, each have a map of the Liaodong Peninsula attached, but no map of Taiwan. Japan’s claim is therefore unsubstantiated.

4. On December 9, 1941, a day after the Japanese bombed Pearl Harbor, the ROC declared war against Japan and repudiated all of its treaties, agreements and contracts with Japan. The Cairo Declaration of 1943 stipulated that “all the territories Japan has stolen from the Chinese, such

as Manchuria, Formosa, and the Pescadores (Penghu), shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed.” In 1945, the Allied Powers issued the Potsdam Proclamation, stating that “the terms of the Cairo Declaration shall be carried out.” In 1945, the Japanese Emperor signed the Instrument of Surrender, declaring Japan’s acceptance of the Potsdam Proclamation in Articles 1 and 6. Article 2 of both the 1951 San Francisco Peace Treaty and the 1952 Treaty of Peace between the Republic of China and Japan stipulate that “Japan has renounced all right, title and claim to Formosa and the Pescadores.” In addition, Article 4 of the 1952 Treaty of Peace between the ROC and Japan further indicates that “all treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war.” This again confirmed that the Treaty of Shimonoseki was null and void and that the Diaoyutai Islands had been restored as ROC territory in accordance with the above legal mechanisms.

5. Japan’s claims that the Diaoyutai Islands originally belonged to it (as part of its Nansei Islands) and its possession thereof had nothing to do with the Treaty of Shimonoseki are unpersuasive. This is because its secret occupation of the islands—Qing Chinese territory—in January 1895, when the Qing dynasty was about to lose the First Sino-Japanese War, violated international law. The Japanese action was consequently invalid *ab initio*. As the Diaoyutai Islands were taken by violence and greed, Japan should have returned the islands, together with Manchuria, Taiwan and Penghu, to the Republic of China in accordance with the

Cairo Declaration and other international instruments established by the Allies with the aim to build a new world order following the end of World War II.

Japan's Position

Q8. The Chinese government, referring to a letter sent in 1885 by the then Japanese foreign minister to the then interior minister, claims that the Meiji government acknowledged the Senkaku Islands were the territory of China before being incorporated into Okinawa Prefecture. What view does the Japanese government have?

A8. The foreign minister's letter in 1885 does constitute one document of the process up to the incorporation of the islands and it is true that it referred to the attitude of the Qing Dynasty. However, it is impossible to interpret it as the acknowledgement by the Government of Japan that the Qing Dynasty held the Senkaku Islands as its territory. Rather, the document shows how Japan proceeded with the process of incorporation carefully and cautiously on the premise that the Senkakus did not belong to Qing Dynasty. The fact that the foreign minister in his letter supported an on-site survey clearly shows that Japan did not consider the Senkaku Islands as the territory of the Qing Dynasty.

Moreover, in his letter to the foreign minister in 1885, the interior minister said to the effect that the Senkaku Islands showed no trace of having been under the control of the Qing Dynasty.

ROC Rebuttal to Q8-A8

1. Japan's reasoning is evasive, deliberately ignoring historical facts and the gist of the Diaoyutai Islands issue. As pointed out in rebuttals to

the previous questions, the Diaoyutai Islands were recorded in historical documents as having been incorporated into China's coastal defense and territory during the Ming and Qing dynasties. The islands were certainly not, as Japan claims, terra nullius—a fact that is even acknowledged in its own official documents.

2. As stated in the ROC rebuttals to Q1 and Q2, Meiji government documents on Japanese diplomacy from 1885 acknowledge that Home Minister Aritomo Yamagata had secretly ordered Okinawa Governor Sutezo Nishimura to survey the Diaoyutai Islands that year with the aim of setting up a national marker there. On September 22, Nishimura sent a classified report stating that the islands had been named, used for many years, and recorded in official documents by China. Noting that it would be inappropriate to erect a national marker immediately after the survey, he recommended that the plan be postponed. Yamagata then secretly consulted with Minister of Foreign Affairs Kaoru Inoue. On October 20, Inoue replied in a highly confidential document (No. 38) that “the Qing state has already named each of the islands. Chinese newspapers have recently reported rumors that Japan is planning to seize Qing islands near Taiwan. It would therefore be appropriate to postpone erecting a national marker to avoid arousing the Qing state's suspicion.” Inoue added, “We should deal with the erection of national markers...at another time,” thereby squelching the Meiji government's ambition to establish a national marker in the area. The Okinawa governor and Japan's home and foreign ministers at the time were obviously aware that the Diaoyutai Islands belonged to China and subsequently decided to refrain from seizing the islands until conditions were right. The First Sino-Japanese

War from 1894 to 1895 provided them the perfect smoke screen.

3. Japan was clearly aware that the Diaoyutai Islands belonged to China and waited until January 1895, when the Qing state was on the verge of defeat in the First Sino-Japanese War, to quietly annex the Diaoyutai Islands through a cabinet decision. As this decision was neither made public nor included in imperial decree No. 13, demarcating the boundaries of Okinawa, the outside world was left in the dark. The decision was merely an internal matter expressing the government's intentions and not legally binding on the outside world, including the Qing dynasty, and thus the Republic of China, which succeeded it.

4. In addition to official ROC records supporting this argument, Japanese scholars Kiyoshi Inoue and Tadayoshi Murata also argued in their research that Japan knew the Diaoyutai Islands were Qing territory when annexing them. In other words, Japan's action did not constitute discovery-occupation under international law.

5. More importantly, Japan not only hid the annexation of the Diaoyutai Islands from the international community, but also refrained from instructing the Okinawa government to place a national marker in the area until May 1969. Being unaware of Japan's actions, other countries could not condemn them. Japan's claim to the islands violates international law and, therefore, was invalid *ab initio*. Realizing that its argument lacks merit, Japan has instead tried to claim that the islands were *terra nullius* and acquired by virtue of discovery-occupation.

Japan's Position

Q9. In incorporating the Senkaku Islands in 1895, did Japan make a thorough survey?

A9. From 1885, surveys of the Senkaku Islands had been thoroughly made by the Government of Japan through the agencies of Okinawa Prefecture and by way of other methods. Through these surveys, it was confirmed that the Senkaku Islands had not only been uninhabited but showed no trace of having been under the control of the Qing Dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on January 14, 1895, to erect markers on the islands to formally incorporate the Senkaku Islands into the territory of Japan. These measures were carried out in accordance with the ways of duly acquiring territorial sovereignty under international law (occupation of terra nullius).

ROC Rebuttal to Q9-A9

1. In 1971, the Japanese government claimed, “From 1885, surveys of the Senkaku Islands [Diaoyutai Islands] had been thoroughly conducted by the Government of Japan through the agencies of Okinawa prefecture and through other means. Through these surveys, it was confirmed that the Senkaku Islands had been not only uninhabited but also showed no trace of having been under the control of the Qing Dynasty of China.” However, this statement is absolutely untrue and can be refuted based on official Meiji documents from 1885 to 1895.

2. The first crucial piece of evidence is a letter dated January 27, 1892, written by Okinawa Governor Kanji Maruoka to Navy Minister Sukenori Kabayama, requesting that the Navy Ministry dispatch the *Kaimon* to survey the Diaoyutai Islands given that these islands were “not sufficiently investigated.” However, the Navy Ministry declined the request due to “perilous seasonal weather.”

3. The second piece of crucial evidence was the letter Okinawa Governor Shigeru Narahara wrote to the Home Ministry on May 12, 1894, which stated, “...as no field surveys have been conducted since the investigation by the police of this prefecture in the 18th year of the Meiji Period [1885], it is difficult to provide any specific reports on them.” These historical documents not only serve to refute the statement by Japan’s current government that “surveys of the Senkaku Islands had been thoroughly made,” but also demonstrate that the Japanese government annexed the Diaoyutai Islands as a result of the First Sino-Japanese War of 1894-1895.

4. Therefore, the issue of sovereignty over the Diaoyutai Islands is strongly linked to the transfer of Taiwan after the First Sino-Japanese War. In 1879, Japan annexed the Ryukyu Islands and embarked on a path to further expand its territory. According to related documents preserved at Japan’s Ministry of Foreign Affairs, National Archives, and National Institute for Defense Studies, the Japanese government’s territorial ambitions regarding the Diaoyutai Islands began in 1885. As highlighted in the rebuttals to Q1, Q2, and Q8, in 1885, Japan’s Home Minister Aritomo Yamagata ordered Okinawa Governor Sutezo Nishimura to

survey the Diaoyutai Islands with the aim of setting up a national marker on the islands. However, following the survey, Nishimura reported that, as these islands had been discovered long ago by China and named and recorded in its official documents, the plan was inappropriate at that time and should be postponed. Yamagata then secretly consulted with Minister of Foreign Affairs Kaoru Inoue, who replied in a highly confidential document (No. 38) that “Chinese newspapers have recently reported that Japan is planning to seize Qing islands near Taiwan. It would therefore be appropriate to postpone erecting a national marker to avoid arousing the Qing state’s suspicion.” Inoue further instructed that the matter “must not be made public through official gazettes and newspapers.” The Meiji government’s plan to establish a national marker was thus thwarted.

5. In July 1894, the First Sino-Japanese War broke out, and by October Japan had gained decisive victories on land and at sea. Recognizing that the balance of power had shifted and believing that the time was right, its cabinet secretly granted permission to Okinawa prefecture on January 14, 1895, to establish a national marker on the Diaoyutai Islands. (However, it was not until May 1969 that a national marker was actually erected by Okinawa prefecture following the eruption of disputes over the islands.)

6. As mentioned above, the Japanese cabinet’s decision was not made public through the normal procedure of an imperial decree, and the outside world knew nothing about this so-called discovery-occupation. According to widely recognized principles of international law, the discovery and occupation of a territory is acknowledged only if terra nullius is confirmed and a formal declaration is made. Otherwise, other

nations could not know that such a claim has been made and decide whether to accord it due diplomatic recognition. International law also mandates that a state may not acquire the legal rights or entitlement to a territory through illegal action or inaction. As the Diaoyutai Islands were at the time Qing territory, and later ROC territory, Japan's secret annexation violated international law and, thus, was invalid *ab initio*.

7. The online information on the Diaoyutai Islands provided by the Japanese Ministry of Foreign Affairs states that “according to the departure and arrival records of the warship *Kongo* in 1887, the ship sailed from Naha in June that year toward the Sakishima Group of Islands (in the direction of the Senkaku Islands) with Navy Lieutenant Kato, chief of a survey team in the Waterways Department, aboard. *Nihon suiro shi* (Japan waterways journal) published in 1894 and other publications carry outlines of Uotsuri Island and others as based on Lieutenant Kato's writings on experiments (records based on on-site surveys) in 1887 and 1888.” With this reference, Japan is attempting to prove that the Meiji government had conducted on-site surveys of the Diaoyutai Islands. However, the *Kongo* log books preserved at the National Institute for Defense Studies show that the ship did not arrive at the islands. In addition, the outlines of Uotsuri Island contained in the 1894 *Nihon suiro shi* were taken from *The China Sea Directory, Volume 4*, which was published in the United Kingdom 10 years beforehand. A Japanese translation of the 1884 directory was published in 1886 within the *Kanin suilo shi* (Japan sea lanes directory), volume 1, part 2. This shows that the Uotsuri Island outlines were not even created by Kato.

8. Furthermore, the secret decision made by the Japanese cabinet on January 14, 1895, was merely an internal matter expressing the government's intentions and, therefore, under international law not legally binding on the Qing state, let alone the Republic of China of today. In fact, the Japanese government did not carry through its secret decision to occupy the Diaoyutai Islands with any concrete actions to support its claim, such as by setting up a national marker or stationing troops there. It was not until May 1969 that a national marker was erected by Okinawa prefecture following the eruption of disputes over the islands. Three months after Japan secretly occupied the Diaoyutai Islands (on April 17, 1895), the Qing court signed the Treaty of Shimonoseki ceding Taiwan to Japan. The official handover took place on May 8, 1895, when Taiwan (including the Diaoyutai Islands) formally became Japanese territory. Therefore, under the principles of international law, Japan's claim to sovereignty over the Diaoyutai Islands by virtue of discovery-occupation was invalid *ab initio*, and its takeover should be considered cession.

Japan's Position

Q10. The Japanese government never made public the Cabinet Decision made in 1895, keeping it secret, didn't it?

A10. It is true that the Cabinet Decision of 1895 was not made public, but it is understood that so were Cabinet decisions in general at that time. After the aforementioned Cabinet Decision, Japan openly exercised its sovereignty over the Senkaku Islands, including the issuance of permits to petitions for land tenancy and field surveys by the central government and the government of Okinawa Prefecture, making it externally known that Japan had an intention to possess the sovereignty of the islands. Under international law, there is no obligation to notify other countries of a government intention to occupy terra nullius.

ROC Rebuttal to Q10-A10

- 1.** While a country can choose whether to disclose a decision, it is the international community that decides whether a decision is in accordance with international law.
- 2.** After occupying the Daito Islands in 1891, Japan made public its claim to them in accordance with international law. In stark contrast, it secretly annexed the Diaoyutai Islands in January 1895. At the time, Japan clearly understood related international laws mandating that an announcement of territorial acquisition must be made so as to notify all other countries. The General Act of the Berlin Conference of 1885, for instance, specified that the occupation of terra nullius must be announced

to the outside world. Therefore, the Japanese cabinet's secret decision to annex the Qing territory of the Diaoyutai Islands was in violation of international law and invalid *ab initio*.

3. Japan later argued that its cabinet did issue imperial decree No. 13 to formally declare sovereignty over the Diaoyutai Islands. However, according to the documents of Japan's Ministry of Foreign Affairs, the Japanese ambassador to China initially cited this decree in Japan's defense, but later retracted the statement, realizing that the decree was a public announcement about the formation of districts in Okinawa prefecture and not about Japan's sovereignty claim over the Diaoyutai Islands. Although Japan has provided inconsistent arguments, it was clearly aware that the Diaoyutai Islands belonged to China. Yet in January 1895, when the Qing state was on the verge of defeat in the First Sino-Japanese War, the Japanese cabinet made a secret decision to covertly annex the Diaoyutai Islands. Its decision was neither made public nor included in imperial decree No. 13 (demarcating the boundaries of Okinawa). As such, the outside world knew nothing about it.

4. Japan claims that the Diaoyutai Islands have been part of its territory since 1895. However, in official maps of Japan, the name "Senkaku Islands" did not appear together with the Nansei Shoto Islands until 1930 on a map created by the Japanese Imperial Land Survey that also showed the Tokara Islands. This name had been given by Okinawa teacher Hisashi Kuroiwa in 1900. Although Japan annexed the Diaoyutai Islands in January 1895, it did not take any action to highlight its sovereignty

claim. Moreover, it failed to erect a national marker until May 1969, after disputes had erupted over the islands.

5. According to widely accepted principles of international law, the discovery and occupation of a territory is recognized only if terra nullius is confirmed and a formal declaration is made. The Japanese cabinet's secret decision was not made public, and was just an internal expression of intent. As such, it was not legally binding on other countries, including the ROC, and invalid under international law. As international law mandates that a state may not acquire the legal rights or entitlement to a territory through illegal action or inaction, Japan's secret annexation of the Diaoyutai Islands, which were at the time Qing territory, and later ROC territory, violated international law, making it invalid ab initio.

6. A document from 1909 on Tatsushiro Koga's reception of a Blue Ribbon Award states, "With the conclusion of the 1894-95 war and victory for the imperial state, the island of Taiwan is part of the empire and the Senkaku Islands belongs to our nation." In addition, a survey on fisheries in the Miyako and Yaeyama districts issued in 1913 noted that Koga was able to lease the Diaoyutai Islands because the islands had been newly incorporated along with Taiwan into Japanese territory following the war between Japan and the Qing state. It is evident from these documents that Japan's private sector did not consider the Diaoyutai Islands to be terra nullius, believing that they were acquired as a result of Japan's victory in the First Sino-Japanese War. In other words, the Diaoyutai Islands were spoils won by Japan at the conclusion of the First Sino-Japanese War.

Japan's Position

Q11. The Chinese government asserts that as a result of Japan's acceptance of the Cairo Declaration of 1943 and the subsequent Potsdam Declaration of 1945, the Senkaku Islands, as islands appertaining to Taiwan, reverted to China along with Taiwan. It also asserts that the Nansei Shoto Islands which had been placed under the administration of the United States under the terms of the San Francisco Peace Treaty, which was concluded while excluding China, had not included the Senkaku Islands, that the Government of the United States in December 1953 announced the "geographic boundaries of the Ryukyu Islands" and unilaterally expanded the scope of jurisdiction of the United States, that when it reverted the rights of administration of Okinawa to Japan in 1971, it included the Senkaku Islands in the territory to be reverted to Japan, and that the Chinese government has never recognized the Senkaku Islands as territory of Japan. What is the view of the Japanese government?

A11. The Cairo Declaration and the Potsdam Declaration were documents that stipulated the basic postwar settlement policy of the Allied powers. There is no evidence that shows that the Allied powers, including the Republic of China, recognized that the Senkaku Islands were included among "the islands appertaining to Formosa (Taiwan)" as stated in the Cairo Declaration in these declarations.

In any event, the disposition of territories as a result of a war is ultimately settled by international agreements, such as peace treaties. In the case of

World War II, the San Francisco Peace Treaty legally defined the territory of Japan after the war. Neither the Cairo Declaration nor the Potsdam Declaration had the ultimate legal validity on the treatment of Japan's territory.

In accordance with Article 2 (b) of the San Francisco Peace Treaty, Japan renounced territorial sovereignty over Formosa (Taiwan) and the Pescadores, which had been ceded by China after the Sino-Japanese War. However, the Senkaku Islands were not included in "Formosa and the Pescadores" as stated in the treaty. It is because under Article 3 of the San Francisco Peace Treaty, the United States actually exercised the rights of administration on the Senkaku Islands as part of the Nansei Shoto Islands. They are also explicitly included in the area whose administrative rights were reverted to Japan when Okinawa was reverted to Japan in 1972.

When the San Francisco Peace Treaty was concluded, the Senkaku Islands were left as territory of Japan. However, none of the major Allied powers concerned—the United States, the United Kingdom, France and China (the Republic of China and the People's Republic of China)—raised objections. Rather, in a *People's Daily* article headlined "Battle of People in Ryukyu Islands against US Occupation," dated January 8, 1953, China criticized the United States for occupying the Ryukyu Islands which were not decided in either the Cairo Declaration or the Potsdam Declaration to be put under trusteeship, against the will of the local people. The article stated that the Ryukyu Islands comprised of seven groups of islands, including the Senkaku Islands, which recognizes that the Senkaku Islands were part of the Ryukyu Islands. Although China

was not a signatory to the San Francisco Peace Treaty, Japan signed the Sino-Japanese Peace Treaty with the Republic of China (Taiwan), which Japan then recognized as the government of China. The Sino-Japanese Peace Treaty approved that Japan had renounced all right, title and claim to Taiwan, the Pescadores, etc., in accordance with Article 2 of the San Francisco Peace Treaty, but during the process of negotiations for this treaty, the Senkaku Islands, whose status as Japanese territory was left untouched, were never taken up for discussion. What this means is that it was considered to be the rightful premise that the Senkaku Islands were the territory of Japan from before that time.

As a result of a survey conducted in the autumn of 1968 by an agency of the United Nations that indicated the possibility of the existence of petroleum resources in the East China Sea, attention was focused on the Senkaku Islands. It was only in the 1970s that the Chinese government and the authorities in Taiwan began to make their own assertions. Prior to that, they had never objected the fact that the Senkaku Islands were included in the area that was placed under the administration of the United States in accordance with Article 3 of the San Francisco Peace Treaty. The Chinese government has never clearly explained why it did not lodge objections to this fact.

ROC Rebuttal to Q11-A11

1. As mentioned above, the Treaty of Shimonoseki signed in April 1895 provided the only legal basis for Japan's acquisition of the Diaoyutai Islands. After Japan was defeated in World War II, it should have returned the Diaoyutai Islands—together with Taiwan proper, its other

appertaining islands, and Penghu—to the Republic of China in accordance with the 1943 Cairo Declaration, 1945 Potsdam Proclamation, 1945 Japanese Instrument of Surrender, and 1952 Treaty of Peace between the Republic of China and Japan.

2. The Cairo Declaration stipulated that the purpose of the Cairo Conference convened by Allied nations was to ensure that “all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores (Penghu), shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed.” On July 26, 1945, Allied countries, namely, the Republic of China, the United States, the United Kingdom, and the Soviet Union, issued the Potsdam Proclamation, Article 8 of which stated that “the terms of the Cairo Declaration shall be carried out.” In the Japanese Instrument of Surrender signed on September 2, 1945, after the Japanese Emperor announced the country’s unconditional surrender, Japan clearly accepted the Potsdam Proclamation. That is, the Japanese Instrument of Surrender combined three documents into one. In 1969, the US Department of State put the three documents in *Treaties and Other International Agreements of the United States of America, 1776-1949*, volume 3, pages 858, 1204-1205, and 1251-1253, respectively. The Japanese Instrument of Surrender was also included in *The United States Statutes at Large* published in 1946, on pages 1733-1739 of part 2 of volume 59; as well as *The United Nations Treaties Series* published in 1952, on pages 387-393 of volume 139. The three documents can also be found in *Jōyaku shū* (Treaty collection) published by Japan’s Ministry of Foreign Affairs in 1948, on pages 594-595,

626-627, and 639 of volume 26-1. Therefore, like any other treaty or international agreement, these documents are considered legally binding on Japan, the United States, and the Republic of China.

3. Moreover, both the 1951 San Francisco Peace Treaty and the 1952 Treaty of Peace between the Republic of China and Japan stipulate that “Japan renounces all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores).” In addition, Article 4 of the 1952 Treaty of Peace between the Republic of China and Japan further indicates that “All treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war.” Article 10 of the Treaty also confirms that all the inhabitants and former inhabitants of Taiwan (Formosa) and Penghu (the Pescadores) and their descendents are nationals of the Republic of China. The Treaty’s Exchange of Notes No. 1 confirms that the Treaty is applicable to ROC territory. Therefore, the Diaoyutai Islands should have been restored to the Republic of China.

4. The government of Japan holds that the Cairo Declaration, the Potsdam Proclamation, Japanese Instrument of Surrender, and Treaty of Peace between the Republic of China and Japan made no mention of the Diaoyutai Islands. This is because all appertaining islands of Taiwan are included in the term Taiwan. The Diaoyutai Islands are not the only islands appertaining to Taiwan; Pengjia Islet, Green Island, Orchid Island, and Xiaoliuqiu also belong to Taiwan. They were not enumerated, as there is no need. Thus, Article 2 of the Treaty of Shimonoseki referred to “the island of Formosa [Taiwan], together with all the islands

appertaining or belonging to the said island of Formosa” without listing each one.

5. Japan posits that the Diaoyutai Islands are unrelated to the Treaty of Shimonoseki, Potsdam Proclamation, Japanese Instrument of Surrender, San Francisco Peace Treaty, and Treaty of Peace between the Republic of China and Japan. In that case, it must provide clear and concrete evidence to support its claims. But as already explicated, Japan possesses official documents from the Meiji era showing knowledge that the Diaoyutai Islands were part of Qing territory. As Japan cannot provide a legal basis for its claims to the Diaoyutai Islands, its occupation of the islands in January 1895 was invalid *ab initio*.

6. Since Japan acquired the Diaoyutai Islands by violence and greed, it should have returned them, together with Manchuria, Taiwan, and Penghu, to the Republic of China in accordance with the Cairo Declaration and subsequent international legal documents affirmed by Allied nations for establishing a new world order in the post-war period.

Japan's Position

Q12. Taiwan (the Republic of China) aside, wasn't China (the People's Republic of China) against the treatment of the Senkaku Islands in the San Francisco Peace Treaty?

A12. The treatment of the Senkaku Islands after the conclusion of the San Francisco Peace Treaty was public knowledge internationally, and the People's Republic of China can in no way claim that it did not know this at the time. In fact, an article dated January 8, 1953, in the *People's Daily*, which is an organ of the Communist Party of China, under the headline "Battle of People in Ryukyu Islands against US Occupation," explicitly included the Senkaku Islands among the Ryukyu Islands, which were under the administration of the United States. Subsequently, the People's Republic of China did not make any objections until the 1970s to the fact that the area placed under the US administration in accordance with Article 3 of the San Francisco Peace Treaty included the Senkaku Islands. China has not explained at all why it did not object.

ROC Rebuttal to Q12-A12

1. As stated in the rebuttal to Japan's position on Q11, the Treaty of Shimonoseki signed in April 1895 provided the only legal basis for Japan's acquisition of sovereignty over the Diaoyutai Islands in that same year. Following Japan's defeat in World War II, it should have returned the Diaoyutai Islands—together with Taiwan proper, its other appertaining islands, and the Penghu Islands—to the ROC in accordance with numerous international legal documents affirmed by Allied nations, including the 1943 Cairo Declaration, the 1945 Potsdam Proclamation,

the 1945 Japanese Instrument of Surrender, and the 1952 Treaty of Peace between the ROC and Japan. These documents have been regarded as international treaties or agreements by the US, Japan, and the ROC, and are therefore legally binding on these three countries, as pointed out in point 3 of the rebuttal to Japan's position on Q11. The ROC is not a signatory to the 1951 San Francisco Peace Treaty, Article 3 of which—contrary to Japanese assertions—made no reference to the Diaoyutai Islands. Meanwhile, according to Article 2 of the 1952 Treaty of Peace between the ROC and Japan, the ROC recognized that Japan renounced all right, title, and claim to Taiwan, Penghu, as well as the Nansha (Spratly) Islands and Shisha (Paracel) Islands. Taiwan, of course, included the Diaoyutai Islands. During negotiations on the Treaty of Peace between the ROC and Japan, neither party brought up the Diaoyutai Islands because they appertained to Taiwan and it was not necessary to enumerate all of Taiwan's appertaining islands. Article 2 of the Treaty of Shimonoseki only mentioned “the island of Formosa [Taiwan], together with all the islands appertaining or belonging to the said island of Formosa,” and did not name all of the appertaining islands. The Japanese government cannot argue that “it was considered to be the rightful premise that the Senkaku Islands were the territory of Japan from before that time” on the grounds that the Diaoyutai Islands were not specifically mentioned in this treaty.

2. After secretly incorporating the Diaoyutai Islands into its national territory in 1895, the Japanese government promptly placed them under the jurisdiction of Okinawa prefecture. During the Taisho Period (1912-1926), it renamed the islands—which the British had called the

Pinnacle Islands—“Senkaku Islands.” When the administrative rights over the Diaoyutai Islands were transferred after World War II, the islands were not under Taiwan’s jurisdiction, while the name “Senkaku Islands” also disguised the fact that they were in fact the Diaoyutai Islands, an inherent part of ROC territory. When Allied nations emerged triumphant from the war in 1945, they did not realize that the “Senkaku Islands”—which Japan had so named more than three decades earlier—were the Diaoyutai Islands, which are an inherent part of ROC territory.

3. In fact, when the US was planning to transfer administrative rights over the Ryukyu Islands and subsequently the Diaoyutai Islands to the Japanese government, the ROC government expressed opposition. As stated in the rebuttal to Japan’s position on Q3, when the US decided to return Amami Oshima—located in the northern part of the Ryukyu Islands—to Japan, the ROC Ministry of Foreign Affairs delivered a memorandum to the US Ambassador to the ROC on November 24, 1953, stating that the ROC had the right and obligation to express its opinion on the final decision concerning the future of the Ryukyu Islands. Furthermore, in response to a note verbale in protest from Chow Shu-kai, ROC ambassador to the US at the time, the US sent a note verbale on May 26, 1971, indicating that the transference of administrative rights over the Diaoyutai Islands to Japan would not affect ROC sovereignty claims over them. The US Senate later clarified that the US was only transferring administration of the islands to Japan and that the US would remain neutral on the sovereignty issue, expressing its belief that the sovereignty issue should be resolved through negotiations between the

ROC and Japan.

Japan's Position

Q13. The Chinese government claims that Japan's stance and approach on the Senkaku islands constitutes outright denial of victorious World War II outcomes against fascism and poses a grave challenge to postwar international order and the purposes and principles of the UN Charter. How does the Japanese government respond to that?

A13. Japan's acquisition of sovereignty over the Senkaku Islands has nothing to do with World War II. The San Francisco Peace Treaty and related treaties, which legally defined Japan's territory after World War II, did so on the premise that the Senkaku Islands were part of Japanese territory. Before the decision was made based on the San Francisco Peace Treaty, neither China nor Taiwan had claimed sovereignty over the Senkaku Islands.

However, as the Senkaku Islands began to draw attention following an academic survey in the fall of 1968 which indicated the possibility of the existence of petroleum resources in the East China Sea, the Chinese government and Taiwan authorities began to make their own assertions about territorial sovereignty over the Senkaku Islands in the 1970s. Moreover, in an attempt to justify its own assertion, China abruptly began to argue about "the outcomes of the World War II" as if Japan was distorting the international framework after World War II. It is Chinese actions, however, that pose a grave challenge to the postwar international order by objecting the decisions based on the San Francisco Peace Treaty, the very international framework that decided the outcomes of World War II concerning Japan.

Moreover, the attitude to easily attribute the difference of opinions to the past war is an act of evasion from the essence of the issue. We view that such attitude is not just unconvincing, but it is also very counterproductive. In fact, the Chinese side, in the Japan-China Joint Statement signed in May 2008 by the leaders of Japan and China, expressed its “positive evaluation of Japan’s consistent pursuit of the path of a peaceful country and Japan’s contribution to the peace and stability of the world through peaceful means over more than 60 years since World War.”

China can never deny the justifiable claim of Japan, which has spent half a century after the war as a peace-loving country, by just arguing about “the outcomes of World War II” nor justify its own assertion concerning the Senkaku Islands.

ROC Rebuttal to Q13-A13

1. The ROC solemnly declares that the Diaoyutai Islands appertain to Taiwan and are an inherent part of ROC territory. The only legal basis for Japan’s occupation of these islands was the Treaty of Shimonoseki, which was annulled after World War II. The Diaoyutai Islands should have been returned to the ROC together with Taiwan in accordance with a number of legally binding international documents, including the 1943 Cairo Declaration, the 1945 Potsdam Proclamation, the 1945 Japanese Instrument of Surrender, and the 1952 Treaty of Peace between the ROC and Japan.

2. Japan believes that the San Francisco Peace Treaty and the Treaty of Peace between the ROC and Japan were signed under the premise that the “Senkaku Islands” were part of Japanese territory. This argument has no basis whatsoever. Both treaties mention Taiwan without enumerating its appertaining islands. That Taiwan’s appertaining islands were not listed does not suggest that the Diaoyutai Islands belong to Japan’s territory. Taiwan has many appertaining islands, none of which were specifically named in the treaties. This does not make them all Japanese territory.

3. In addition to hampering relations with Taiwan, Japan’s “nationalization” of the Diaoyutai Islands and other unilateral actions since 2012 have seriously undermined ROC sovereignty and posed an even greater challenge to postwar international order, the principle of peaceful settlement of disputes under international law, as well as the UN Charter. This has given the ROC cause for serious concern and protest.

4. As stated in the rebuttal to Japan’s position on Q6, Japan had to renounce sovereignty over Taiwan’s territory, which included the Diaoyutai Islands, in accordance with the 1951 San Francisco Peace Treaty. Therefore, the name “Senkaku Islands” (Diaoyutai Islands) did not appear in the maps of either Kyushu or the Nansei Shoto Islands found in the appendix on Kyushu in the *Nihon chili* (Geography of Japan), which was approved by the Geospatial Information Authority of Japan as per document No. 878 on April 4, 1961. This was not an exception. In the *Nihon chizushū* (Complete atlas of Japan) published by Teikoku Shoin on November 20, 1963, as well as in the “Geography of Japan” section of volume two of the *Gakken Color Encyclopedia*, which was compiled by

Taiji Suzuki and published by the Japan Library Association on April 1, 1969, the name “Senkaku Islands” did not appear in the map of the Nansei Shoto Islands either. In fact, maps of the Nansei Shoto Islands printed in Japan between 1945 and 1970 did not show the Diaoyutai Islands. This indicates that prior to 1970 Japan did not dare claim the Diaoyutai Islands, which are part of ROC territory. It was not until 1968 when the United Nations Economic Commission for Asia and the Far East (ECAFE; currently known as the UN Economic and Social Commission for Asia and the Pacific) released a report indicating potential oil and gas resources in the East China Sea continental shelf that Japan turned its attention to the Diaoyutai Islands and claimed them as part of the Nansei Shoto Islands.

5. In an attempt to acquire the continental shelf around the Diaoyutai Islands, Japan released a statement on the Diaoyutai Islands sovereignty issue on September 17, 1970, placing the islands under Okinawa’s Yaeyama District. It claimed that its cabinet had formally agreed on January 14, 1895, that Uotsuri Island (Diaoyutai) and Kuba Island (Huangwei) to the northwest of the Yaeyama Islands would appertain to Okinawa prefecture, and that it had decided to erect a marker in the prefecture in accordance with a confidential report from the Okinawa governor. The statement added that on April 1, 1896, in accordance with imperial decree No. 13, the islands were incorporated under domestic law, and that the islands were incorporated into the local administrative district of Yaeyama. As stated in the rebuttals to Japan’s positions on Q1, Q2, Q10, and Q13, imperial decree No. 13 was no more than an announcement defining Okinawa as a prefecture, and did not involve the

incorporation of the Diaoyutai Islands. Japan's argument is highly implausible, and demonstrates that Japan attempted to bolster its sovereignty claim over the Diaoyutai Islands only after the 1968 UN survey discovered oil resources in the East China Sea. Japan's claim has absolutely no basis in either historical facts or international law.

6. Taiwan did not claim sovereignty over the Diaoyutai Islands because of the 1968 UN survey discovery of potential oil resources in the East China Sea. In fact, the islands had already become Qing territory appertaining to Taiwan in 1683. Taiwan was a party to the 1958 Convention on the Continental Shelf. The Diaoyutai Islands are 102 nautical miles from the island of Taiwan and located on Taiwan's continental shelf. When the ROC Legislative Yuan ratified the Convention on the Continental Shelf on August 21, 1970, it raised two reservations. First, the boundary of the continental shelf appertaining to two or more states whose coasts are adjacent to and/or opposite each other shall be determined in accordance with the principle of natural prolongation of their territories. Second, in determining the boundary of the continental shelf of the ROC, exposed rocks and islets shall not be taken into consideration. This demonstrates that the ROC government had no intention of using the exposed rocks of the Diaoyutai Islands as an excuse to expand the boundary of its continental shelf and lay claim to potential oil and gas resources in the region.

Japan's Position

Q14. The Chinese government claims that in the process of negotiations leading up to the normalization of Japan-China relations in 1972 and the concluding of the bilateral Treaty of Peace and Friendship in 1978, “the leaders of the two reached an important understanding and mutual recognition about shelving the issue of the Senkaku Islands and leaving it for solution in future.” How does the Japanese government respond to that?

A14. There is no doubt, in light of historical facts and based upon international law, that the Senkaku Islands are an inherent part of the territory of Japan. Indeed, the Senkaku Islands are under the valid control of Japan. To begin with, there exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.

Japan’s position as stated above has been consistent and it is not true that there was an agreement with the Chinese side about “shelving” or “maintaining the status quo” regarding the Senkaku Islands. This is clearly shown in the published record of the Japan-China Summit Meeting held on the occasion of the normalization of bilateral diplomatic relations. Japan has pointed out its position to the Chinese side clearly and time and again.

ROC Rebuttal to Q14-A14

1. The Diaoyutai Islands are an island group appertaining to Taiwan under the administrative jurisdiction of Daxi Village in Toucheng Township, Yilan County, Taiwan province. Whether looked at from the perspective of history, geography, geology, practical use, or international

law, they constitute an integral part of the sovereign territory of the ROC. Whether looked at from the perspective of history or international law, Japan's arguments are weak, and even erroneous, as detailed in the aforementioned rebuttals.

2. In September 2012, the Japanese government's move to nationalize three of the Diaoyutai Islands raised tension in the East China Sea. The ROC immediately lodged a protest and, in the spirit of the East China Sea Peace Initiative proposed by President Ma Ying-jeou on August 5 of the same year, called upon all parties concerned to (1) exercise restraint and refrain from taking any antagonistic actions; (2) shelve controversies and not abandon dialogue; (3) observe international law and resolve disputes through peaceful means; (4) seek consensus on a code of conduct in the East China Sea; and (5) establish a mechanism for cooperation on exploring and developing resources in the East China Sea. Concrete steps include moving from three sets of bilateral dialogue to one set of trilateral negotiation, and, by replacing confrontation with dialogue and shelving controversies in favor of consultations, discuss the possibility of jointly exploring and developing resources in the East China Sea.

3. Since its announcement, the East China Sea Peace Initiative has received international recognition and affirmation. On April 10, 2013, the ROC and Japan formally signed the Taiwan-Japan fisheries agreement following the 17th round of bilateral fishery negotiations. This agreement, which embodies the spirit of the East China Sea Peace Initiative with regard to resolving disputes through peaceful means, successfully protects the rights and interests of ROC fishermen operating in the East

China Sea. In a speech delivered at the East-West Center in Hawaii on August 13, 2014, US Secretary of State John Kerry stated that “the United States of America takes no position on questions of sovereignty in the South and East China Sea.” Referring to the Taiwan-Japan fisheries agreement as an example that “it’s possible to promote regional stability despite conflicting claims,” he added that “all claimants must work together to resolve the claims through peaceful means, big or small.”

4. The ROC government will continue to uphold its sovereignty over the Diaoyutai Islands and, in the spirit of the East China Sea Peace Initiative, seek peaceful and pragmatic solutions to disputes and endeavor to safeguard regional security.

Q15. What has been the position of the United States Government on the Senkaku Islands?

A15. Since the end of World War II, the Senkaku Islands were placed under the administration of the United States of America as part of the Nansei Shoto Islands in accordance with Article 3 of the San Francisco Peace Treaty. With the entry into force in 1972 of the Agreement between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands (the Okinawa Reversion Agreement), the administrative rights over the Senkaku Islands were reverted to Japan. As is clearly expressed in a statement issued by Secretary of State Dulles at the San Francisco Peace Conference and in the Joint Communiqué of Japanese Prime Minister Kishi and US President Eisenhower issued on Jun 21, 1957, the US Government did recognize Japan's "residual sovereignty" over the Nansei Shoto Islands.

Furthermore, in connection with the application of Article 5 of the Treaty of Mutual Cooperation and Security between Japan and the United States of America (the Japan-US Security Treaty), the US government has made it clear that the Senkaku Islands have been under the administration of the Government of Japan since their reversion to Japan as part of the Okinawa reversion in 1972 and that the Japan-US Security Treaty applies to the Senkaku Islands.

Regarding Kuba Island and Taisho Island, which are both part of the Senkaku Islands, even though China had already started claiming its sovereignty over the Senkaku Islands, about the Senkaku islands there

has been no change in the status of the two islands as facilities and areas within Japan which have been offered to the United States by Japan under the Japan-US Status of Forces Agreement since the Okinawa Reversion Agreement entered into force in 1972.

In addition to the above, the following facts can be pointed out:

(1) Since fishermen from Taiwan frequently intruded into territorial waters around the Senkaku Islands and made unlawful landing thereon, the Ministry of Foreign Affairs of Japan sent a Note Verbale to Ambassador of the United States of America to Japan on August 3, 1968, requesting the US Government to take necessary steps to control and regulate the intruders and to prevent any recurrence of intrusions. The US side replied that expulsion of intruders and other measures had been taken.

(2) A secret intelligence report produced by the Central Intelligence Agency in 1971, which was approved for release in 2007, stated that the Senkakus are commonly considered as part of the large Ryukyu Island chain, and that “the Japanese claim to sovereignty over the Senkakus is strong, and the burden of proof of ownership would seem to fall on the Chinese.”

ROC Rebuttal to Q15-A15

1. After secretly annexing the Diaoyutai Islands in 1895, Japan changed the name of the islands to “Senkaku Islands” and incorporated them into Okinawa prefecture. This unilateral and covert action by Japan violated

international law and was invalid *ab initio*. However, as the outside world did not know about Japan's actions at that time, Japan, by using the name "Senkaku Islands," was able to conceal the true identity of the islands as an integral part of ROC territory, even for a period after World War II. As a result, a number of international legal documents stipulating how to deal with Japan following the war, including the Cairo Declaration, were not fully implemented.

2. As the international community was not aware that the "Senkaku Islands" were in fact the Diaoyutai Islands, Article 3 of the San Francisco Peace Treaty mistakenly placed the islands, together with the Ryukyu Islands, under US trusteeship. When the US—on the grounds that Japan still had "residual sovereignty" over the Ryukyu Islands—decided in 1971 to sign the Okinawa Reversion Treaty with Japan, "returning" the Nansei Shoto Islands, including the Diaoyutais and Ryukyus, to Japan, the ROC promptly lodged a protest. As stated in the rebuttals to Japan's positions on Q3 and Q12, Chow Shu-kai, then ROC ambassador to the US, sent a note verbale in protest to the US Department of State on March 15, 1971, stating that the Diaoyutai Islands are an inherent part of ROC territory and that the US should not transfer administrative rights over the islands to Japan. The US sent an official reply on May 26, before signing the Okinawa Reversion Treaty with Japan on June 17, indicating that the return of administrative rights over the islands, which it had acquired from Japan, would not affect the ROC sovereignty claim over them. The US Senate later clarified that the US was only transferring administrative rights over the islands to Japan and that the US would remain neutral on the sovereignty issue, which it believed should be

resolved through negotiations between the ROC and Japan. According to these diplomatic documents, which the US has never rescinded, the transference of administrative rights was not a confirmation of Japan's sovereignty over the islands, and the US holds a neutral stance on this issue and maintains that it should be resolved through negotiations between the ROC and Japan.

3. The US has consistently held a neutral stance on the issue of sovereignty over the Diaoyutai Islands, and has clearly indicated that an international dispute exists on this issue. For example, at a meeting with the visiting Japanese Minister of Foreign Affairs Fumio Kishida in January 2013, then US Secretary of State Hillary Clinton stated that an international dispute exists concerning sovereignty over the Diaoyutai Islands. In addition, at a joint press conference with Prime Minister Shinzo Abe during a visit to Japan on April 23-24, 2014, President Barack Obama stated that the US does not “take a position on final sovereignty determinations with respect to Senkakus.” US Secretary of State John Kerry also reiterated that the US “takes no position on questions of sovereignty in the South and East China Sea” in a speech delivered at the East-West Center in Hawaii on August 13 of the same year.

4. The Diaoyutai Islands appertain to Taiwan and are an inherent part of ROC territory. They are unrelated to the Ryukyu Islands. The only legal basis for Japan's occupation of the Diaoyutai Islands was the Treaty of Shimonoseki, which was annulled after World War II. Japan should have returned the Diaoyutai Islands to the ROC.

Japan's Position

Q16. China is strongly objecting to the Japanese government's acquisition of the ownership of three Senkaku islands in September 2012. How does the Japanese government view such objection?

A16. There is no doubt whatsoever that the Senkaku Islands are an inherent part of the territory of Japan in light of historical facts and based upon international law. Indeed, those islands are under the valid control of the Government of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands. The Government of Japan's acquisition of the ownership of the three Senkaku islands will not give rise to any problem with another country or region.

On the other hand, it is true that the Chinese government is making its own assertions on the Senkaku Islands. While Japan does not accede to such assertions, the Government of Japan has been explaining to the Chinese government from a broad perspective that the recent ownership transfer was aimed at maintaining and managing the Senkaku Islands peacefully and stably on a long-term basis and that the transfer is nothing more than returning the ownership from a private citizen to the Government, with which the ownership rested until 1932. The Government of Japan, as a country sharing responsibility for the peace and stability of East Asia, will continue to call upon the Chinese side to behave calmly without losing sight of the overall relationship between the two countries.

It is a matter for deep regret that violent anti-Japanese demonstrations took place in various parts of China, with some people throwing rocks

and debris at Japanese diplomatic missions, physically injuring Japanese citizens, and setting fire on, damaging and looting facilities of Japanese business establishments. Regardless of reasons, violent acts must never be tolerated, and any dissatisfaction resulting from difference in views must be expressed in a peaceful manner. Japan is asking China to ensure the safety of Japanese citizens and businesses and to compensate properly the damage incurred by Japanese businesses.

ROC Rebuttal to Q16-A16

- 1.** The Diaoyutai Islands are an inherent part of ROC territory. Any action taken by Japan with regard to the Diaoyutai Islands prior to obtaining ROC approval seriously undermines ROC sovereignty, and gives cause for serious concern and protest.
- 2.** Japan claims that its “nationalization” of the Diaoyutai Islands in 2012 was aimed at maintaining and managing the islands stably on a long-term basis, and that it was nothing more than an internal transfer of land ownership that did not involve “other countries.” The ROC solemnly protests this attempt by Japan to further strengthen the false impression that it effectively controls the islands.
- 3.** Further study shows that, following its secret annexation of the Diaoyutai Islands in 1895, its land management changed from “nationalization” to “privatization” based on the changing international situation at that time. Now Japan is again switching to “nationalization.” Japan is trying to use “nationalization” as a basis to strengthen its management of the Diaoyutai Islands, as well as evidence for its claim

that it exercises effective rule over the islands. However, its action cannot legitimize its secret annexation of the Diaoyutai Islands. Moreover, it has led to escalating tensions over the international dispute concerning the islands' sovereignty. This is not in line with the principle of peaceful settlement of disputes endorsed by international law and the UN Charter. Japan should bear all responsibility for related developments.